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UNITED STATES OF AMERICA.

MR. WEBSTER'S SPEECH

IN DEFENCE OF

THE CHRISTIAN MINISTRY,

AND IN FAVOR OF THE

RELIGIOUS INSTRUCTION OF THE YOUNG.

DELIVERED IN THE

SUPREME COURT OF THE UNITED STATES,

FEBRUARY 10, 1844,

IN THE CASE OF STEPHEN GIRARD'S WILL.

WASHINGTON:
PRINTED BY GALES AND SEATON.
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CORRESPONDENCE.

WASHINGTON, *February* 13, 1844.

SIR: Enclosed is a copy of certain proceedings of a meeting held in reference to your argument in the Supreme Court in the case arising out of the late Mr. Girard's will. In communicating to you the request contained in the second resolution, we take leave to express our earnest hope that you may find it convenient to comply with that request.

We are, sir, with high consideration, yours, very respectfully,

P. R. FENDALL,
HORACE STRINGFELLOW,
JOSHUA N. DANFORTH,
R. R. GURLEY,
WILLIAM RUGGLES,
JOEL S. BACON,
THOMAS SEWALL,
WILLIAM B. EDWARDS,
} *Committee.*

Hon. DANIEL WEBSTER.

At a meeting of a number of citizens, belonging to different religious denominations, of Washington and its vicinity, convened to consider the expediency of procuring the publication of so much of Mr. Webster's argument before the Supreme Court of the United States, in the case of François F. Vidal *et al.*, appellants, *vs.* the Mayor, &c., of Philadelphia, and Stephen Girard's executors, as relates to that part of Mr. Girard's will which excludes ministers of religion from any station or duty in the college directed by the testator to be founded, and denies to them the right of visiting said college—the object of the meeting having been stated by Professor Sewall in a few appropriate remarks, the Hon. Henry L. Ellsworth was elected chairman, and the Rev. Isaac S. Tinsley secretary.

Whereupon it was, on motion, unanimously resolved—

1st. That, in the opinion of this meeting, the powerful and eloquent argument of Mr. Webster, on the before-mentioned clause of Mr. Girard's will, demonstrates the vital importance of Christianity to the success of our free institutions, and its necessity as the basis of all useful moral education; and that the general diffusion of that argument among the people of the United States is a matter of deep public interest.

2d. That a committee of eight persons, of the several Christian denominations represented in this meeting, be appointed to wait on Mr. Webster, and, in the name and on behalf of this meeting, to request him to prepare for the press the

portion referred to of his argument in the Girard case; and, should he consent to do so, to cause it to be speedily published and extensively disseminated.

The following gentlemen were appointed the committee under the second resolution: Philip R. Fendall, Esq., Rev. Horace Stringfellow, Rev. Joshua N. Danforth, Rev. R. Randolph Gurley, Professor William Ruggles, Rev. President J. S. Bacon, Doctor Thomas Sewall, Rev. William B. Edwards.

The meeting then adjourned.

H. L. ELLSWORTH, *Chairman.*

Isaac S. Tinsley, *Secretary.*

Washington, *February* 13, 1844.

Gentlemen: I have the honor to acknowledge the receipt of your communication. Gentlemen connected with the public press have, I believe, reported my speech in the case arising under Mr. Girard's will. I will look over the report of that part of it to which you refer, so far as to see that it is free from material errors, but I have not leisure so to revise it as to give it the form of a careful or regular composition.

I am, gentlemen, with very true regard, your obedient servant,

DANIEL WEBSTER.

To Messrs. P. R. Fendall.
Horace Stringfellow.
Joshua N. Danforth.
R. R. Gurley.
William Ruggles.
Thomas Sewall.
William B. Edwards.

Socrates. If, then, you wish public measures to be right and noble, *virtue* must be given by you to the citizens.

Alcibiades. How could any one deny that?

Socrates. *Virtue*, therefore, is that which is to be first possessed, both by you and by every other person who would have direction and care, not only for himself and things dear to himself, but for the State and things dear to the State.

Alcibiades. You speak truly.

Socrates. To act justly and wisely; (both you and the State,) YOU MUST ACT ACCORDING TO THE WILL OF GOD.

Alcibiades. It is so. [*Plato, in Alcibiades.*

"Sic igitur hoc a principio persuasum civibus, dominos esse omnium rerum ac moderatores, Deos."—*Cicero de Legibus.*

"We shall never be such fools as to call in an enemy to the substance of any system, to supply its defects, or to perfect its construction."

"If our religious tenets should ever want a further elucidation, we shall not call on Atheism to explain them. We shall not light up our temple from that unhallowed fire."

"We know, and it is our pride to know, that man is, by his constitution, a religious animal."—*Burke.*

SPEECH.

May it please your Honors:

It is not necessary for me to narrate, in detail, the numerous provisions in Mr. Girard's will. This has already been repeatedly done by other counsel, and I shall content myself with stating and considering those parts only which are immediately involved in the decision of this cause. The will is drawn with apparent care and method, and is regularly divided into clauses. The first nineteen clauses contain various devises and legacies to relatives, other private individuals, and to public bodies.

By the 20th clause the whole residue of his estate, real and personal, is devised and bequeathed to the "mayor, aldermen, and citizens of Philadelphia," in trust for the several uses to be after mentioned and declared.

The 21st clause contains the devise or bequest to the college, in these words:

"And so far as regards the residue of my personal estate in trust, as to two millions of dollars, part thereof, to apply and expend so much of that sum as may be necessary in erecting, as soon as practicably may be, in the centre of my square of ground, between High and Chestnut streets, and Eleventh and Twelfth streets, in the city of Philadelphia, (which square of ground I hereby devote for the purpose hereinafter stated, and for no other, forever,) a permanent college, with suitable out-buildings, sufficiently spacious for the residence and accommodation of at least three hundred scholars, and the requisite teachers and other persons necessary in such an institution as I direct to be established, and in supplying the said college and out-buildings with decent and suitable furniture, as well as books, and all things needful to carry into effect my general design."

The testator then proceeds to direct that the college shall be constructed of the most durable materials, avoiding needless ornament, and attending chiefly to the strength, convenience, and neatness of the whole; and gives directions, very much in detail, respecting the form of the building, and the size and

fashion of the rooms. The whole square, he directs, shall be enclosed with a solid wall, at least fourteen inches thick and ten feet high, capped with marble, and guarded with irons on the top, so as to prevent persons from getting over; and there are to be two places of entrance into the square, with two gates at each, one opening inward and the other outward, those opening inward to be of iron, and those opening outward to be of wood work, lined with sheet iron.

The testator then proceeds to state his directions respecting the institution, laying down his plan and objects in several articles. The third article is in these words:

"3. As many poor white male orphans, between the ages of six and ten years, as the said income shall be adequate to maintain, shall be introduced into the college as soon as possible; and from time to time, as there may be vacancies, or as increased ability from income may warrant, others shall be introduced."

The fifth direction is as follows:

"5. No orphan should be admitted until the guardians, or directors of the poor, or a proper guardian or other competent authority, shall have given, by indenture, relinquishment, or otherwise, adequate power to the mayor, aldermen, and citizens of Philadelphia, or to directors or others by them appointed, to enforce, in relation to each orphan, every proper restraint, and to prevent relations or others from interfering with or withdrawing such orphan from the institution."

By the sixth article, or direction, preference is to be given, *first*, to orphans born in Philadelphia; *second*, to those born in other parts of Pennsylvania; *third*, to those born in the city of New York; and, *lastly*, to those born in the city of New Orleans.

By the seventh, it is declared that the orphans shall be lodged, fed, and clothed, in the college; that they shall be instructed in the various branches of a sound education, comprehending reading, writing, grammar, arithmetic, geography, navigation, surveying, practical mathematics, astronomy; natural, chemical, and experimental philosophy; and the French and Spanish languages, and such other learning and science as the capacities of the scholars may merit or want. The Greek and Latin languages are not forbidden, but are not recommended.

By the ninth article it is declared, that the boys shall remain in the college till they arrive at between fourteen and eighteen

years of age, when they shall be bound out by the city government to suitable occupations, such as agriculture, navigation, mechanical trades, &c.

The testator then proceeds to say that he necessarily leaves many details to the city government; and then adds, "there are, however, some restrictions which I consider it my duty to prescribe, and to be, amongst others, conditions on which my bequest for said college is made, and to be enjoyed."

The second of these restrictions is in the following words:

"*Secondly.* I enjoin and require *that no ecclesiastic, missionary, or minister, of any sect whatever, shall ever hold or exercise any station or duty whatever, in the said college; nor shall any such person ever be admitted for any purpose, or as a visiter, within the premises appropriated to the purposes of the said college.*

"In making this restriction, I do not mean to cast any reflection upon any sect or person whatsoever; but, as there is such a diversity of opinion amongst them, I desire to keep the tender minds of the orphans, who are to derive advantage from this bequest, free from the excitement which clashing doctrines and sectarian controversy are so apt to produce; my desire is, that all the instructers and teachers in the college shall take pains to instil into the minds of the scholars *the purest principles of morality*, so that on their entrance into active life they may, *from inclination* and habits, evince *benevolence towards their fellow-creatures, and a love of truth, sobriety, and industry*, adopting at the same time such religious tenets as their *matured reason* may enable them to prefer."

The testator having, after the date of his will, bought a house in Penn township, with forty-five acres of land, he made a codicil, by which he directed the college to be built on this estate, instead of the square mentioned in the will, and the whole establishment to be made thereon, just as if he had in his wil devoted the estate to that purpose.

The city government has accordingly been advised that the whole forty-five acres must be enclosed with the same high wall, as was provided in the will for the square in the city.

I have now stated, I believe, all the provisions of the will which are material to the discussion of that part of the case which respects the character of the institution.

The first question is, whether this devise can be sustained, otherwise than as a charity, and by that special aid and assistance by which courts of equity support gifts to charitable uses.

If the devise be a good limitation at law, if it require no ex-

ercise of the favor which is bestowed on privileged testaments, then there is already an end to the question. But I take it, that this point is conceded. The devise is void, according to the general rules of law, on account of the uncertainty in the description of those who are intended to receive its benefits.

"Poor white male orphan children" is so loose a description, that no one can bring himself within the terms of the bequest, so as to say that it was made in his favor. No individual can acquire any right, or interest; nobody, therefore, can come forward as a party, in a court of law, to claim participation in the gift.

The bequest must stand, then, if it stand at all, on the peculiar rules which equitable jurisprudence applies to charities. This is clear.

I proceed, therefore, to submit, and most conscientiously to argue, a question, certainly one of the highest which this court has been called upon to consider, and one of the highest, and most important, in my opinion, ever likely to come before it. *That question is, whether, in the eye of equitable jurisprudence, this devise be a charity at all.* I deny that it is so. I maintain, that neither by judicial decisions, nor by correct reasoning on general principles, can this devise or bequest be regarded as a charity. This part of the argument is not affected by the particular judicial system of Pennsylvania, or the question of the power of her courts to uphold and administer charitable gifts. The question which I now propose, respects the inherent, essential, and manifest character of the devise itself. In this respect, I wish to express myself clearly, and to be correctly and distinctly understood. What I have said, I shall stand by, and endeavor to maintain, viz: that in the view of a court of equity this devise *is no charity at all.* It is no charity, because the plan of education proposed by Mr. Girard is derogatory to the Christian religion; tends to weaken men's reverence for that religion, and their conviction of its authority and importance; and therefore, in its general character, tends to mischievous, and not to useful ends.

The proposed school is to be founded on plain and clear

principles, and for plain and clear objects, of infidelity. This cannot well be doubted; and a gift, or devise, for such objects, is not a charity, and as such entitled to the well known favor with which charities are received and upheld by the courts of Christian countries.

In the next place, the object of this bequest is against the public policy of the State of Pennsylvania, in which State Christianity is declared to be the law of the land. For that reason, therefore, as well as the other, the devise ought not to be allowed to take effect.

These are the two propositions which it is my purpose to maintain, on this part of the case.

This scheme of instruction begins by attempting to attach reproach and odium to the whole clergy of the country. It places a brand, a stigma, on every individual member of the profession, without an exception. No minister of the gospel, of any denomination, is to be allowed to come within the grounds belonging to this school, on any occasion, or for any purpose whatever. They are all rigorously excluded, as if their mere presence might cause pestilence.

We have heard it said that Mr. Girard, by this will, distributed his charity without distinction of sect or party. However that may be, sir, he certainly has dealt out opprobrium to the whole profession of the clergy, without regard to sect or party.

By this will, no minister of the gospel of any sect or denomination whatever, can be authorized or allowed to hold any office within the college; and not only that, but no minister or clergyman of any sect can, for any purpose whatever, enter within the walls that are to surround this college. If a clergyman has a sick nephew, or a sick grandson, he cannot, upon any pretext, be allowed to visit him within the walls of the college. The provision of the will is express and decisive. Still less may a clergyman enter to offer consolation to the sick, or to unite in prayer with the dying.

Now, I will not arraign Mr. Girard or his motives for this. I will not inquire into Mr. Girard's opinions upon religion.

But I feel bound to say (the occasion demands that I should say) that this is the most opprobrious, the most insulting, and unmerited stigma that ever was cast, or attempted to be cast, upon the preachers of Christianity, from north to south, from east to west, the length and breadth of the land, in the history of the country. When have they deserved it? Where have they deserved it? How have they deserved it? They are not to be allowed even the ordinary rights of hospitality! Not even to be permitted to put their foot over the threshold of this college!

Sir, I take it upon myself to say, that in no country in the world, upon either continent, can there be found a body of ministers of the gospel who perform so much service to man, in such a full spirit of self-denial, under so little encouragement from Government of any kind, and under circumstances, always much straitened and often distressed, as the ministers of the gospel in the United States, of all denominations!

They form no part of any established order of religion; they constitute no hierarchy; they enjoy no peculiar privileges—in some of the States they are even shut out from all participation in the political rights and privileges enjoyed by their fellow-citizens; they enjoy no tithes—no public provision of any kind. And except here and there, in large cities, where a wealthy individual occasionally makes a donation for the support of public worship, what have they to depend upon? They have to depend entirely on the voluntary contributions of those who hear them.

And this body of clergymen has shown, to the honor of their own country, and to the astonishment of the hierarchies of the old world, that it is practicable in free governments to raise and sustain a body of clergymen—which for devotedness to their sacred calling, for purity of life and character, for learning, intelligence, piety, and that wisdom which cometh from above, is inferior to none, and superior to most others, by voluntary contributions alone.

I hope that our learned men have done something for the honor of our literature abroad. I hope that the courts of justice

and members of the bar of this country have done something to elevate the character of the profession of the law—I hope that the discussions above (in Congress) have done something to meliorate the condition of the human race, to secure and extend the great charter of human rights, and to strengthen and advance the great principles of human liberty. But I contend that no literary efforts, no adjudications, no constitutional discussions, nothing that has been done or said in favor of the great interests of universal man, has done this country more credit at home and abroad, than the establishment of our body of clergymen, their support by voluntary contributions, and the general excellence of their character, their piety, and learning.

That great truth has been thus proclaimed and proved, (a truth which I believe will in time to come shake all the hierarchies of Europe,) that the voluntary support of such a ministry, under free institutions, is a practicable idea.

And yet every one of these is by this devise denied the privileges which are at the same time open to the vilest of our race—every one is shut out from this, I had almost said, *sanctum*—but I will not profane that word by such a use of it.

Did the man ever live that had a respect for the Christian religion, and yet had no regard for *any one* of its ministers? Did that system of instruction ever exist, which denounced the whole body of Christian teachers, and yet called itself a system of Christianity?

The learned counsel on the other side see the weak points of this case. They are not blind. They have, with the aid of their great learning, industry, and research, gone back to the time of Constantine—have gone through the history of the Roman Emperors—the dark ages and the intervening period—down to the settlement of these colonies; they have explored every nook and corner of religious and Christian history, to find out the various meanings and uses of Christian charity; and yet, with all their skill and all their research, they have not been able to discover any thing which has ever been regarded as a Christian charity, which sets such an opprobrium

upon the forehead of all its ministers. If, with all their endeavors, they can find any one thing which has been so regarded, *they may have their college*, and make the most of it.

The thing does not exist—it *never had a being*—history does not record it—common sense revolts at it.

It certainly is not necessary for me to make an ecclesiastical argument in support of this proposition. The thing is so plain that it must instantly commend itself to your Honors.

It has been said that Mr. Girard was charitable. I am not now going to controvert this. I hope he was. I hope he has found his reward. It has also been asked, "cannot Mr. Girard be allowed to have his own will—to devise his property according to his own desire?" Certainly he can, in any legal devise, and the law will sustain him therein. But it is not for him to overturn the law of the land. The law cannot be altered to please Mr. Girard. He found that out, I believe, in two or three instances in his lifetime.

Nor can the law be altered on account of the magnitude and munificence of the bounty. What is the value of that bounty, however great or munificent, which touches the very foundations of human society—which touches the very foundations of Christian charity—which touches the very foundations of public law, and the Constitution, and the whole welfare of the State?

And now, let me ask, what is, in contemplation of law, "a charity?" The word has various significations. In the larger and broader sense, it means the kindly exercise of the social affections—all the good feelings which man entertains towards man. Charity is love. This is that charity of which St. Paul speaks—that charity which covereth the sins of men—"that suffereth all things, hopeth all things." In a more popular sense, charity is alms-giving or active benevolence.

But the question for your Honors to decide here is, what is a charity, or a charitable use, in contemplation of law. To answer this inquiry, we are generally referred to the objects enumerated in the 43d of Elizabeth. The objects enumerated in that statute, and others analogous to them, are charities in the sense of equitable jurisprudence.

There is no doubt a school of learning is a charity. It is one of those mentioned in the statutes. Such a school of learning as was contemplated by the statutes of Elizabeth is a charity; and all such have borne that name and character to this day.

I mean to confine myself to that description of charity—the statute charity; and to apply that description to this case alone.

The devise before us proposes to establish, as its main object, a school of learning—a college. There are provisions of course, for lodging, clothing, and feeding the pupils—but all this is subsidiary. The great object is the instruction of the young; although it proposes to give the children better food and clothes and lodging, and proposes that the system of education shall be somewhat better than that which is usually provided for the poor and destitute in our public institutions generally.

The main object, then, is to establish a school of learning for children, beginning with them at a very tender age, and retaining them (viz: from 6 years to 18) till they are on the verge of manhood, when they will have expended more than one-third part of the average duration of human life. For if the college takes them at six, and keeps them till they are eighteen, a period of twelve years will be passed, which is much more than a third part of the average of human existence. These children, then, are to be taken almost before they learn their alphabet, and be discharged about the time that men enter on the active business of life. At six, many do not know their alphabet. John Wesley did not know a letter till after he was six years old, and his mother then took him on her lap, and taught him his alphabet at a single lesson. And there are many parents who think that any attempt to instil the rudiments of education into the mind of a child earlier than that age, is little better than labor thrown away.

The great object, then, which Mr. Girard seemed to have in view, was to take these orphans at this very tender age, and to keep them within his walls until they were entering manhood. And this object, I pray your Honors steadily to bear in mind.

I never, in the whole course of my life, listened to any thing with more sincere delight than to the remarks of my learned friend who opened this cause, on the nature and character of true charity. I agree with every word he said on that subject. I almost envy him his power of expressing so happily what his mind conceived so clearly and correctly. He is right when he speaks of it as an emanation of the Christian religion. He is right when he says that it has its origin in the word of God. He is right when he says that it was unknown through all the globe till the first dawn of Christianity. He is right, pre-eminently right, in all this, as he was pre-eminently happy in his power of clothing his thoughts and feelings in appropriate forms of speech.

And I maintain, that in any institution for the instruction of youth, where the authority of God is disowned, and the duties of Christianity derided and despised, and its ministers shut out from all participation in its proceedings, there can no more be charity, true charity, found to exist, than evil can spring out of the Bible, error out of truth, or hatred and animosity come forth from the bosom of perfect love.

No, sir! No, sir! If charity denies its birth and parentage—if it turns infidel to the great doctrines of the Christian religion—if it turns unbeliever—it is no longer charity! There is no longer charity, either in a Christian sense, or in the sense of jurisprudence; for it separates itself from the fountain of its own creation.

There is nothing in the history of the Christian religion; there is nothing in the history of human laws, either before or after the Conquest; there can be found no such thing as a school of instruction in a Christian land, from which the Christian religion has been, of intent and purpose, rigorously and opprobriously excluded, and yet such school regarded as a charitable trust, or foundation. This is the first instance on record. I do not say that there may not be charity schools, in which religious instruction is not provided. I need not go that length, although I take that to be the rule of the English law. But what I do say, and repeat, is, that a school for the instruction of the young, which sedulously and reproachfully excludes

Christian knowledge, is no charity, either on principle or authority, and is not, therefore, entitled to the character of a charity in a court of equity. I have considered this proposition, and am ready to stand by it.

I will not say there may not be a charity for instruction in which there is no positive provision for the Christian religion. But I do say, and do insist, that there is no such thing in the history of religion, no such thing in the history of human law, as a charity—a school of instruction for children from which the Christian religion and Christian teachers are excluded, as unsafe and unworthy intruders. Such a scheme is deprived of that which enters into the very essence of human benevolence, when that benevolence contemplates the instruction, that is to say, religious knowledge, connected with human knowledge; it is this which causes it to be regarded as a charity; and by reason of which it is entitled to the special favor of the courts of law.

This is the vital question which must be decided by this Court. It is vital to the understanding of what the law is—it is vital to the validity of this devise.

If this be true, if there can be no charity in that plan of education which opposes Christianity, then that goes far to decide this case.

I take it that this Court, in looking at this subject, will see the important bearing of this point upon it.

The learned counsel said that the State of Pennsylvania was not an infidel State. It is true that she is not an infidel State. She has a Christian origin—a Christian code of laws—a system of legislation founded on nothing else, in many of its important bearings upon human society, than the belief of the people of Pennsylvania—their firm and sincere belief, in the divine authority and great importance of the truths of the Christian religion. And she should the more carefully seek to preserve them pure.

Now, let us look at the condition and prospects of these tender children, who are to be submitted to this experiment of instruction without Christianity. In the first place, they are orphans—have no parents to guide or instruct them in the

way in which they should go—no father, no religious mother, to lead them to the pure fount of Christianity—*they are orphans!*

If they were only poor, there might be somebody bound by the ties of human affection to look after their spiritual welfare; to see that they imbibed no erroneous opinions on the subject of religion; that they run into no excessive improprieties of belief as well as conduct; the child would have its father or mother to teach it to lisp the name of its Creator in prayer, or hymn His praise.

But in this experimental school of instruction, if the orphans have any friends or connexions able to look after their welfare, it shuts them out. It is made the duty of the governors of the institution, on taking the child, so to make out the indentures of apprenticeship as to keep it from any after interference in its welfare on the part of guardians or relatives; to keep these from withdrawing it from the school, or interfering with its instruction whilst it is in the school, in any manner whatever.

The school or college is to be surrounded by high walls; there are to be two gates in these walls, and no more; they are to be of iron within and iron bound or covered without; thus answering more to the description of a castle than a school house. The children are then to be thus guarded for twelve years in this, I do not mean to say a prison, nor do I mean to say that this is exactly close confinement; but it is much more, much closer confinement, than ordinarily is met with under the rules of any institution at present, and has a resemblance to the monastic institutions of past ages, rather than to any school for instruction at this period.

All is to be within one great enclosure; all that is done for the bodily or mental welfare of the child is to be done within this enclosure. It has been said that the children could attend public worship elsewhere. Where is the proof of this? There is no such provision in the devise; there is nothing said about it in any part of Mr. Girard's will; and I shall show presently that any such thing would be just as adverse to Mr. Gi-

rard's whole scheme, as it would be that the doctrines of Christianity should be preached within the walls of the college.

These children, then, are taken before they know the alphabet. They are kept till the period of early manhood, and then sent out into world to enter upon its business and affairs. By this time, the character will have been stamped. For if there is any truth in the Bible, if there is any truth in those oracles which soar above all human authority, or if any thing be established as a general fact, by the experience of mankind, in this first third of human life the character is formed. And what sort of a character is likely to be made by this process, this experimental system of instruction?

I have read the two provisions of Mr. Girard's will in relation to this feature of his school. The first excludes the Christian religion and all its ministers from his walls. The second explains the whole principles upon which he purposes to conduct his school. It was to try an experiment in education, never before known to the Christian world. It had been recommended often enough among those who did not belong to the Christian world. But it was never known to exist, never adopted by any body even professing a connexion with Christianity.

And I cannot do better, in order to show the tendency and object of this institution, than to read from a paper by Bishop White, which has been referred to by the other side.*

Now, in order to a right understanding of what was Mr. Girard's real intention, and original design, we have only to read carefully the words of the clause I have referred to. He enjoins that no ministers of religion, of any sects, shall be allowed to enter his college, on any pretence whatever. Now, it is obvious, that by *sects*, he means *Christian sects*. Any of the followers of Voltaire or D'Alembert may have admission into this school whenever they please, because they are not usually spoken of as "sects." The doors are to be opened to the opposers and revilers of Christianity, in every form and shape, and shut to its supporters. While the voice of the up-

* Vide Appendix, No. 1.

holders of Christianity is never to be heard within the walls, the voices of those who impugn Christianity may be raised high and loud, till they shake the marble roof of the building.

It is no less derogatory thus to exclude the one, and to admit the other, than it would be to make a positive provision and all the necessary arrangements for lectures and lessons and teachers, for all the details of the doctrines of infidelity. It is equally derogatory, it is the same in principle, thus to shut the door to one party, and open the door to the other.

We must reason as to the probable results of such a system according to natural consequences. They say, on the other side, that infidel teachers will not be admitted in this school. How do they know that? What is the inevitable tendency of such an education as is here prescribed? What is likely to occur? The Court cannot suppose that the trustees will act in opposition to the directions of the will. If they accept the trust, they must fulfil it, and carry out the details of Mr. Girard's plan.

Now, what is likely to be the effect of this system on the minds of these children, thus left solely to its pernicious influence, with no one to care for their spiritual welfare in this world or the next? They are to be left entirely to the tender mercies of those who will try upon them this experiment of moral philosophy or philosophical morality. Morality, without sentiment. Benevolence towards man, without a sense of responsibility towards God. The duties of this life performed, without any reference to the life which is to come. This is Mr. Girard's theory of useful education.

Half of these poor children may die before the term of their education expires. Still, those who survive must be brought up imbued fully with the inevitable tendencies of the system

It has been said that there may be lay preachers among them. Lay preachers! This is ridiculous enough in a country of Christianity and religion. [Here some one handed Mr. Webster a note.] A friend informs me that in four of the principal religious sects in this country, the Episcopalians, Presbyterians, Methodists, and Baptists, they allow no lay preachers; and these four constitute a large majority of the re-

ligious and Christian portion of the people of the United States. And, besides, lay preaching was just as adverse to Mr. Girard's original object and whole plan, as professional preaching; *provided, it should be Christianity, which should be preached.*

It is plain, as plain as language can be made, that he did not intend to allow the minds of these children to be troubled about religion of any kind, whilst they were within the college. And why? He himself assigns the reason. Because of the difficulty and trouble, he says, that might arise from the multitude of sects and creeds, and teachers, and the various clashing doctrines and tenets advanced by the different preachers of Christianity. Therefore, his desire as to these orphans is, that their minds should be kept free from all bias of any kind in favor of any description of Christian creed, till they arrived at manhood, and should have left his walls.

Now, are not laymen equally sectarian in their views as clergymen? And would it not be just as easy to prevent sectarian doctrines from being preached by a clergyman as being taught by a layman? It is idle, therefore, to speak of lay preaching.

Mr. SERGEANT here rose, and said that they on their side had not uttered one word about lay preaching. It was lay teaching they spoke of.

Mr. WEBSTER. Well, I would just as soon take it that way as the other—*teaching*, as preaching. Is not the teaching of laymen as sectarian as the preaching of clergymen? What is the difference between unlettered laymen and lettered clergymen in this respect? Every one knows that laymen are as violent controversialists as clergymen, and the less informed the more violent. So this, while it is a little more ridiculous, is equally obnoxious. [Here there was quite a burst of laughter in the Court.] According to my experience, a layman is just as likely to launch out into sectarian views, and to advance clashing doctrines and violent bigoted prejudices, and even more so, than professional preachers. And the introduction, therefore, of these controversies by laymen, would not be a very edifying mode of teaching, nor would it be a very edifying example. As in other cases, so in this, the greatest degree of candor is

usually found accompanying the greatest degree of knowledge. Nothing is more apt to be positive, and dogmatical, than ignorance.

But there is no provision in any feature of Mr. Girard's will for the introduction of any lay teaching on religious matters whatever. The children are to get their religion when they leave his school, and they are to have nothing to do with religion before they do leave it. They are then to choose their religious opinions, and not before.

Mr. BINNEY. "Choose their tenets" is the expression.

Mr. WEBSTER. Tenets are opinions, I believe. The mass of one's religious tenets makes up one's religion.

Now, it is evident that Mr. Girard meant to found a school of morals, without any reference to or connexion with religion. But, after all, there is nothing original in this plan of his. It has its origin in a deistical source, but not from the highest school of infidelity. Not from Bolingbroke, or Shaftesbury, or Gibbon; not even from Voltaire or D'Alembert. It is from two persons, who were probably known to Mr. Girard in the early part of his life—it is from Mr. Thomas Paine and Mr. Volney. Mr. Thomas Paine, in his Age of Reason, says: "Let us devise means to establish schools of instruction, that we may banish the ignorance that the ancient regime of kings and priests have spread among the people. Let us propagate morality, unfettered by superstition."

Mr. BINNEY. What do you get that from?

Mr. WEBSTER. The same place that Mr. Girard got this provision of his will from—Paine's Age of Reason. The same phraseology in effect is here. Paine disguised his real meaning, it is true. He said: "Let us devise means to establish schools to propagate morality, unfettered by *superstition*." Mr. Girard, who had no disguise about him, uses plain language to express the same meaning. In Mr. Girard's view, *religion* is just that thing which Mr. Paine calls *superstition*. Let us establish schools of morality, said he, unfettered by religious tenets. Let us give these children a system of pure morals before they adopt any religion. The ancient regime of which Paine spoke as obnoxious was that of kings and priests.

That was the popular way he had of making any thing obnoxious that he wished to destroy. Now, if he had *merely* wished to get rid of the dogmas which he says were established by kings and priests—if he had no desire to abolish the Christian religion itself—he could have thus expressed himself: "Let us rid ourselves of the errors of kings and priests, and plant morality on the plain text of the Christian religion, with the simplest forms of religious worship."

I do not intend to leave this part of the cause, however, without a still more distinct statement of the objections to this scheme of instruction. This is due, I think, to the subject and to the occasion; and I trust I shall not be considered presumptuous, or as trenching upon the duties which properly belong to another profession. But I deem it due to the cause of Christianity to take up the notions of this scheme of Mr. Girard, and show how mistaken is the idea of calling it a charity. In the first place, then, I say, this scheme is derogatory to Christianity, because it rejects Christianity from the education of youth, by rejecting its teachers—by rejecting the ordinary agencies of instilling the Christian religion into the minds of the young. I do not say that, in order to make this a charity, there should be a positive provision for the teaching of Christianity, although I take that to be the rule in an English court of equity. But I need not, in this case, claim the whole benefit of that rule. But I say it is derogatory, because there is a positive rejection of Christianity—because it rejects the ordinary means and agencies of Christianity. He who rejects the ordinary means of accomplishing an end, means to defeat that end itself, or else he has no meaning. And it will not be supposed, I trust, that I am intruding on ground belonging to another profession, if I enlarge a little on that proposition. He who rejects the ordinary means of accomplishing an end, intends to defeat the end itself. And I say that this is true, although the means originally be means of human appointment, and not attaching to or resting on any higher authority.

For example, if the New Testament had contained a set of principles of morality and religion, without reference to the means

by which those principles were to be established, and yet, if in the course of time a system of means had sprung up, become identified with the history of the world, become general, sanctioned by continued use and custom, then he who rejects those means would design to reject, and would reject, that morality and religion themselves.

This is strictly true, where the end rested on divine authority, and human agency devised and used the means. But if the means themselves be of divine authority also, then the rejection of them is direct rejection of that authority.

Now, I suppose there is nothing in the New Testament more clearly established by the Author of Christianity than the appointment of a Christian ministry. The world was to be evangelized, was to be brought out of darkness into light, by the influences of the Christian religion, spread and propagated by the instrumentality of man. A Christian ministry was therefore appointed by the Author of the Christian religion himself, and it stands on the same authority as any other part of his religion. When the lost sheep of the house of Israel were to be brought to the knowledge of Christianity, the Disciples were commanded to go forth into all the cities, and to preach "that the kingdom of Heaven is at hand." It was added, that whosoever should not receive them, nor hear their words, it should be more tolerable for Sodom and Gomorrha, than for them. And after his resurrection, in the appointment of the great mission to the whole human race, the Author of Christianity commanded his Disciples that they should "go into all the world, and preach the gospel to every creature." This was one of his last commands; and one of his last promises was the assurance, "Lo, I am with you alway, even to the end of the world!" I say, therefore, there is nothing set forth more authentically in the New Testament than the appointment of a Christian ministry; and he who does not believe this, does not and cannot believe the rest. It is true that Christian ministers, in this age of the world, are selected, in different ways and different modes, by different sects and denominations. But there are, still, ministers of all sects and denominations. Why should we shut our eyes to the whole history of Christianity? Is it

not the preaching of ministers of the gospel that has evangelized the more civilized part of the world? Why do we, at this day, enjoy the lights and benefits of Christianity ourselves? Do we not owe it to the instrumentality of the Christian ministry? The ministers of Christianity, departing from Asia Minor, traversing Asia, Africa, through Europe, to Iceland, Greenland, and the poles of the earth, suffering all things, enduring all things, hoping all things, raising men every where from the ignorance of idol worship to the knowledge of the true God, and every where bringing life and immortality to light, through the gospel, have only been acting in obedience to the Divine instruction; they were commanded to go forth, and they have gone forth, and they still go forth. They have sought, and they still seek, to be able to preach the gospel to every creature under the whole Heaven. And where was Christianity ever received, where were its truths ever poured into the human heart, where did its waters, springing up into everlasting life, ever burst forth, except in the track of a Christian ministry? Did we ever hear of an instance, does history record an instance, of any part of the globe Christianized by lay preachers or "lay teachers?" And, descending from kingdoms and empires to cities and countries, to parishes and villages, do we not all know that wherever Christianity has been carried, and wherever it has been taught, by human agency, that agency was the agency of ministers of the gospel? It is all idle, and a mockery, to pretend that any man has respect for the Christian religion who yet derides, reproaches, and stigmatizes all its ministers and teachers. It is all idle, it is a mockery, and an insult to common sense, to maintain that a school for the instruction of youth, from which Christian instruction, by Christian teachers, is sedulously and rigorously shut out, is not deistical and infidel, both in its purpose and its tendency. I insist, therefore, that this plan of education is, in this respect, derogatory to Christianity, in opposition to it, and calculated either to subvert or to supersede it.

In the next place, this scheme of education is derogatory to Christianity, because it proceeds upon the presumption that the

Christian religion is not the only true foundation, or any necessary foundation, of morals. The ground taken is, that religion is not necessary to morality; that benevolence may be ensured by habit, and that all the virtues may flourish, and be safely left to the chance of flourishing, without touching the waters of the living spring of religious responsibility. With him who thinks thus, what can be the value of the Christian revelation? So the Christian world has not thought; for with that Christian world, throughout its broadest extent, it has been, and is, held as a fundamental truth, that religion is the only solid basis of morals, and that moral instruction, not resting on this basis, is only a building upon sand. And at what age of the Christian era have those who professed to teach the Christian religion, or to believe in its authority and importance, not insisted on the absolute necessity of inculcating its principles and its precepts into the minds of the young? In what age, by what sect, where, when, by whom, has religious truth been excluded from the education of youth? No where; never. Every where, and all times, it has been, and it is, regarded as essential. It is of the essence, the vitality, of useful instruction. From all this, Mr. Girard dissents. His plan denies the necessity and the propriety of religious instruction as a part of the education of youth. He dissents, not only from all the sentiments of Christian mankind, from all common conviction, and from the results of all experience, but he dissents, also, from still higher authority—the word of God itself. My learned friend has referred, with propriety, to one of the commands of the Decalogue; but there is another, a first commandment, and that is a precept of religion, and it is in subordination to this, that the moral precepts of the Decalogne are proclaimed. This first great commandment teaches man that there is one, and only one, great first cause—one, and only one, proper object of human worship. This is the great, the ever fresh, the overflowing fountain of all revealed truth. Without it, human life is a desert, of no known termination on any side, but shut in on all sides by a dark and impenetrable horizon. Without the light of this truth, man knows nothing of his origin, and nothing of his end. And

when the Decalogue was delivered to the Jews, with this great announcement and command at its head, what said the inspired lawgiver? that it should be kept from children? that it should be reserved as a communication fit only for mature age? Far, far otherwise. "And these words, which I command thee this day, shall be in thy heart. And thou shalt teach them diligently unto thy children, and shall talk of them when thou sittest in thy house, and when thou walkest by the way, when thou liest down, and when thou risest up."

There is an authority still more imposing and awful. When little children were brought into the presence of the Son of God, his Disciples proposed to send them away; but he said, "Suffer little children to come unto me"—unto *me;* he did not send them first for lessons in morals to the schools of the Pharisees or to the unbelieving Saducees, nor to read the precepts and lessons *phylacteried* on the garments of the Jewish priesthood; he said nothing of different creeds or clashing doctrines; but he opened at once to the youthful mind the everlasting fountain of living waters, the only source of immortal truths; "Suffer little children to come *unto me.*" And that injunction is of perpetual obligation. It addresses itself to-day with the same earnestness and the same authority which attended its first utterance to the Christian world. It is of force every where, and at all times. It extends to the ends of the earth, it will reach to the end of time, always and every where sounding in the ears of men, with an emphasis which no repetition can weaken, and with an authority which nothing can supersede—"*Suffer little children to come unto me.*"

And not only my heart, and my judgment, my belief, and my conscience, instruct me that this great precept should be obeyed, but the idea is so sacred, the solemn thoughts connected with it so crowd upon me, it is so utterly at variance with this system of philosophical *morality* which we have heard advocated, that I stand and speak here in fear of being influenced by my feelings to exceed the proper line of my professional duty. Go thy way at this time, is the language of philosophical morality, and I will send for thee at a more con-

venient season. This is the language of Mr. Girard, in his will. In this there is neither religion nor reason.

The earliest and the most urgent intellectual want of human nature is, the knowledge of its origin, its duty, and its destiny. "Whence am I, what am I, and what is before me?" This is the cry of the human soul, so soon as it raises its contemplation above visible material things.

When an intellectual being finds himself on this earth, as soon as the faculties of reason operate, one of the first inquiries of his mind is, "Shall I be here always." "Shall I be here forever?" And reasoning from what he sees daily occurring to others, he learns to a certainty that his state of being must one day be changed. I do not mean to deny, that it may be true that he is created with this consciousness; but whether it be consciousness, or the result of his reasoning faculties, man soon learns that he must die. And of all sentient beings, he alone, so far as we can judge, attains to this knowledge. His Maker has made him capable of learning this. Before he knows his origin and destiny, he knows that he is to die. Then comes that most urgent and solemn demand for light that ever proceeded, or can proceed, from the profound and anxious broodings of the human soul. It is stated, with wonderful force and beauty, in that incomparable composition, the book of Job—"*For there is hope of a tree, if it be cut down, that it will sprout again, and that the tender branch thereof will not cease; that through the scent of water, it will bud and bring forth boughs like a plant. But if a man die, shall he live again?*" And that question nothing but God, and the religion of God, can solve. Religion does solve it, and teaches every man that he is to live again, and that the duties of this life have reference to the life which is to come. And hence, since the introduction of Christianity, it has been the duty, as it has been the effort, of the great and the good, to sanctify human knowledge, to bring it to the fount, and to baptise learning into Christianity; to gather up all its productions, its earliest and its latest, its blossoms and its fruits, and lay them all upon the altar of religion and virtue.

Another important point involved in this question is, what becomes of the Christian Sabbath, in a school thus established? I do not mean to say that this stands exactly on the same authority as the Christian religion, but I mean to say that the observance of the Sabbath is a part of Christianity in all its forms. All Christians admit the observance of the Sabbath. All admit that there is a Lord's day, although there may be a difference in the belief as to which is the right day to be observed. Now, I say that in this institution, under Mr. Girard's scheme, the ordinary observance of the Sabbath could not take place, because the ordinary means of observing it are excluded. I know that I shall be told here, also, that lay teachers would come in again; and I say again, in reply, that where the ordinary means of attaining an end are excluded, the intention is to exclude the end itself. There can be no Sabbath in this college—there can be no religious observance of the Lord's day; for there are no means for attaining that end. It will be said that the children would be permitted to go out. There is nothing seen of this permission in Mr. Girard's will. And I say again, that it would be just as much opposed to Mr. Girard's whole scheme to allow these children to go out and attend places of public worship on the Sabbath day, as it would be to have ministers of religion to preach to them within the walls; because if they go out to hear preaching, they will hear just as much about religious controversies, and clashing doctrines, and more, than if appointed preachers officiated in the college. His object, as he states, was to keep their minds free from all religious doctrines and sects—and he would just as much defeat his ends by sending them out as by having religious instruction within. Where, then, are these little children to go? Where can they go to learn the truth—to reverence the Sabbath? They are far from their friends—they have no one to accompany them to any place of worship—no one to show them the right from the wrong course; their minds must be kept clear from all bias on the subject, and they are just as far from the ordinary observance of the Sabbath as though there was no Sabbath day at all. And where there is no observance of the

Christian Sabbath, there will of course be no public worship of God.

In connexion with this subject, I will observe, that there has been recently held a large convention of clergymen and laymen in Columbus, Ohio, to bring the minds of the Christian public to the importance of a more particular observance of the Christian Sabbath; and I will read, as part of my argument, an extract from their address, which bears with peculiar force upon this case.

"It is alike obvious that the Sabbath exerts its salutary power by making the population acquainted with the being, perfections, and laws of God; with our relations to Him as his creatures, and our obligations to Him as rational, accountable subjects, and with our character as sinners, for whom His mercy has provided a Saviour; under whose government we live to be restrained from sin and reconciled to God, and fitted by his word and spirit for the inheritance above.

"It is by the reiterated instruction and impression which the Sabbath imparts to the population of a nation, by the moral principle which it forms—by the conscience which it maintains—by the habits of method, cleanliness, and industry, it creates—by the rest and renovated vigor it bestows on exhausted animal nature—by the lengthened life and higher health it affords—by the holiness it inspires, and cheering hopes of Heaven, and the protection and favor of God, which its observance ensures—that the Sabbath is rendered the moral conservator of nations.

"The omnipresent influence the Sabbath exerts, however, by no secret charm or compendious action, upon masses of unthinking minds; but by arresting the stream of worldly thoughts, interests, and affections—stopping the din of business—unlading the mind of its cares and responsibilities, and the body of its burdens, while God speaks to men, and they attend, and hear, and fear, and learn to do His will.

"You might as well put out the sun, and think to enlighten the world with tapers—destroy the attraction of gravity, and think to wield the universe by human powers—as to extinguish the moral illumination of the Sabbath, and break this glorious mainspring of the moral government of God."

And I would ask, would any Christian man consider it desirable for his orphan children, after his death, to find refuge within this asylum, under all the circumstances and character, and the characteristics, which belong to it? Are there, or will there be, any Christian parents who would desire that their children should be placed in this school, to be for twelve years exposed to the pernicious influences which must be brought to bear on their minds? I very much doubt if there is any Christian father who hears me this day, and I am quite sure

that there is no Christian mother, who, if called upon to lie down on the bed of death, although sure to leave their children as poor as children can be left, who would not rather trust them, nevertheless, to the Christian charity of the world, however uncertain it has been said to be, than to place them where their physical wants and comforts would be abundantly attended to, but away from the solaces and consolations, the graces and the grace of the Christian religion. They would rather trust them to the mercy and kindness of that spirit, which, when it has nothing else left, gives a cup of cold water in the name of a disciple—to that spirit which has its origin in the fountain of all good, and of which we have on record an example the most beautiful, the most touching, the most intensely affecting, that the world's history contains—I mean the offering of the poor widow, who threw her two mites into the treasury. "And he looked up, and saw the rich men casting their gifts into the treasury; and he saw, also, a certain poor widow casting in thither two mites; and he said, of a truth, I say unto you that this poor widow hath cast in more than they all; for all these have, of their abundance, cast in unto the offerings of God: but she of her penury hath cast in all the living that she had." What more tender, more solemnly affecting, more profoundly pathetic, than this charity, this offering to God, of a farthing! We know nothing of her name, her family, or her tribe. We only know that she was a poor woman, and a widow, of whom there is nothing left upon record but this sublimely simple story, that when the rich came to cast their proud offerings into the treasury, this poor woman came also, and cast in her two mites! which made a farthing! And that example, thus made the subject of Divine commendation, has been read, and told, and gone abroad every where, and sunk deep into a hundred millions of hearts, since the commencement of the Christian Era—and that example has done more good than could be accomplished by a thousand marble palaces—because it was charity mingled with true benevolence—given in the fear, the love, the service, and honor of God—because it was charity—as all true charity is—that had its origin in the law of

God!—because it was a gift to the honor of God! Cases have come before the courts, of bequests, in last wills, made or given to God, without any more specific direction; and these bequests have been regarded as creating charitable uses. But can that be truly called a charity, which flies in the face of all the laws of God, and all the usages of Christian man? I arraign no man for mixing up a love of distinction and notoriety with his charities. I blame not Mr. Girard because he desired to raise a splendid marble palace in the neighborhood of a beautiful city, that should endure for ages, and transmit his name and fame to posterity. But his school of learning is not to be valued, because it has not the chastening influences of true religion—because it has no fragrance of the spirit of Christianity. It is not a charity, for it has not that which gives to a charity for education its chief value. It will, therefore, sooth the heart of no Christian parent, dying in poverty and distress, that those who owe to him their being may be led, and fed, and clothed, by Mr. Girard's bounty, at the expense of being excluded from all the means of religious instruction afforded to other children, and shut up through the most interesting period of their lives, in a seminary without religion, and with moral sentiments as cold as its own marble walls.

I now come to the consideration of the second part of this clause in the will—that is to say, the reasons assigned by Mr. Girard for making these restrictions with regard to the ministers of religion: and I say that these are much more derogatory to Christianity than the main provision itself, excluding them. He says that there is such a multitude of sects and such diversity of opinion, that he will exclude all religion and all its ministers, in order to keep the minds of the children free from clashing controversies. Now, does not this tend to subvert all belief in the utility of teaching the Christian religion to youth at all? Certainly, it is a broad and bold denial of such utility. To say that the evil resulting to youth from the differences of sects and creeds overbalances all the benefits which the best education can give them, what is this but to say, that the branches of the tree of religious knowledge are so twisted, and twined, and commingled, and all

run so much into and over each other, that there is therefore no remedy but to lay the axe to the root of the tree itself? It means that—and nothing more than that—and nothing less! Now, if there can be any thing more derogatory to the Christian religion than this, I should like to know what it is. In all this we see the attack upon religion itself, made on its ministers, its institutions, and its diversities. And that is the objection urged by all the lower and more vulgar schools of infidelity throughout the world. In all these schools, called schools of Rationalism in Germany, Socialism in England, and by various other names in various countries which they infest, this is the universal cant. The first step of all these philosophical moralists, and regenerators of the human race, is to attack the agency through which religion and Christianity are administered to man. But in this there is nothing new or original. We find the same mode of attack and remark in Paine's "Age of Reason." At page 336 he says: "The Bramin, the follower of Zoroaster, the Jew, the Mahometan, the Church of Rome, the Greek Church, the Protestant Church, split into several hundred contradictory sectaries, preaching, in some instances, damnation against each other, all cry out, '*Our holy religion.*'"

And we find the same in "Volney's Ruins of Empires." Mr. Volney arrays in a sort of semicircle the different and conflicting religions of the world. "And, first," says he, "surrounded by a group, in various fantastic dress, that confused mixture of violet, red, white, black, and speckled garments, with heads shaved, with tonsures, or with short hairs, with red hats, square bonnets, pointed mitres, or long beards, is the standard of the Roman Pontiff. On his right, you see the Greek Pontiff, and on the left are the standards of two recent chiefs, (Luther and Calvin,) who, shaking off a yoke that had become tyrannical, had raised altar against altar in their reform, and wrested half of Europe from the Pope. Behind these are the subaltern seats, subdivided from the principal divisions. The Nestorians, Eutycheans, Jacobites, Iconoclasts, Anabaptists, Presbyterians, Wickliffites, Oriandrians, Manicheans, Pretists, Adamites, the Contemplatives, the Quakers, the Weepers, and a

hundred others, all of distinct parties, persecuting when strong, tolerant when weak, hating each other in the name of the God of peace, forming such an exclusive heaven in a religion of universal charity, damning each other to pains without end in a future state, and realizing in this world the imaginary hell of the other."

Can it be doubted for an instant that sentiments like these are derogatory to the Christian religion? And yet on grounds and reasons *exactly these*—not *like* these—but *exactly* THESE—Mr. Girard founds his excuse for excluding Christianity and its ministers from his school. He is a tame copyist, and has only raised marble walls to perpetuate and disseminate the principles of Paine and of Volney. It has been said that Mr. Girard was in a difficulty—that he was the judge and disposer of his own property. We have nothing to do with his difficulties. It has been said that he must have done as he did do, because there could be no agreement, otherwise—agreement? among whom? about what? He was at liberty to do what he pleased with his own. He had to consult no one as to what he should do in the matter. And if he had wished to establish such a charity as might obtain the especial favor of the courts of law, he had only to frame it on principles not hostile to the religion of the country.

But the learned gentleman went even farther than this, and to an extent that I regretted; he said that there was as much dispute about the Bible as about any thing else in the world. No, thank God, that is not the case!

BINNEY. The disputes about the meaning of words and passages! you will admit that?

WEBSTER. Well, there is a dispute about the translation of certain words; but if this be true, there is just as much dispute about it out of Mr. Girard's institution as there would be in it. And if this plan is to be advocated and sustained, why does not every man keep his children from attending all places of public worship until they are over eighteen years of age? He says that a prudent parent keeps his child from the influence of sectarian doctrines—by which I suppose him to mean those tenets

that are opposed to his own. Well, I do not know but what that plan is as likely to make bigots as it is likely to make any thing else. I grant that the mind of youth should be kept pliant, and free from all undue and erroneous influences—that it should have as much play as is consistent with prudence; but put it where it can obtain the elementary principles of religious truth, at any rate—those broad and general precepts and principles which are admitted by all Christians. But here in this scheme of Mr. Girard, all sects and all creeds are denounced. And would not a prudent father rather send his child where he could get instruction under any form of the Christian religion than where he could get none at all? There are many instances of institutions, professing one leading creed, educating youths of different sects. The Baptist College in Rhode Island receives and educates youths of all religious sects and all beliefs. The colleges all over New England differ in certain minor points of belief, and yet that is held as no ground for excluding the youth with other forms of belief, and other religious views and sentiments. So with the Methodists, and other denominations.

But this objection to the multitude and differences of sects is but the old story—the old infidel argument. It is notorious that there are certain great religious truths which are admitted and believed by all Christians. All believe in the existence of a God. All believe in the immortality of the soul. All believe in the responsibility, in another world, for our conduct in this. All believe in the divine authority of the New Testament. Dr. Paley says that a single word from the New Testament shuts up the mouth of human questioning, and excludes all human reasoning. And cannot all these great truths be taught to children without their minds being perplexed with clashing doctrines and sectarian controversies? Most certainly they can.

And, to compare secular with religious matters, what would become of the organization of society, what would become of man as a social being, in connexion with the social system, if

we applied this mode of reasoning to him in his social relations? We have a constitutional Government, about the powers, and limitations, and uses of which there is a vast amount of differences of belief. Your Honors have a body of laws, now before you, in relation to which differences of opinion, almost innumerable, are daily spread before the courts; in all these we see clashing doctrines and opinions advanced daily, to as great an extent as in the religious world.

And apply the reasoning advanced by Mr. Girard to human institutions, and you will tear them all up by the root; as you would inevitably tear all Divine institutions up by the root, if such reasoning is to prevail. At the meeting of the first Congress there was a doubt in the minds of many about the propriety of opening the session with prayer; and the reason assigned was, as here, the great diversity of opinion and religious belief. Until at last Mr. Samuel Adams, with his gray hairs hanging about his shoulders, and with an impressive venerableness now seldom to be met with, (I suppose, owing to the difference of habits,) rose in that assembly, and with the air of a perfect Puritan, said it did not become men, professing to be Christian men, who had come together for solemn deliberation in the hour of their extremity, to say that there was so wide a difference in their religious belief, that they could not, as one man, bow the knee in prayer to the Almighty, whose advice and assistance they hoped to obtain. And Independent as he was, and an enemy to all prelacy as he was known to be, he moved that the Rev. Mr. Dushe, of the Episcopal Church, should address the Throne of Grace in prayer. And John Adams, in his letter to his wife, says that he never saw a more moving spectacle. Mr. Dushe read the Episcopal service of the Church of England, and then, as if moved by the occasion, he broke out into extemporaneous prayer. And those men who were then about to resort to force to obtain their rights, were moved to tears; and floods of tears, he says, ran down the cheeks of the pacific Quakers who formed part of that most interesting assembly. And depend upon it, that where there is a spirit of Christianity, there is a spirit which rises

above form, above ceremonies, independent of sect or creed, and the controversies of clashing doctrines.

The consolations of religion cannot ever be administered to any of these sick and dying children in this college. But it is said that a poor dying child can be carried out beyond the walls of the school. He can be carried out to a hostelry, or hovel, and there receive those rites of the Christian religion which cannot be performed within those walls, even in his dying hour! Is not all this shocking? What a stricture is it upon this whole scheme! What an utter condemnation! A dying youth cannot receive religious solace within his seminary of learning!

But, it is asked, what could Mr. Girard have done? He could have done as has been done in Lombardy by the Emperor of Austria—as my learned friend has informed us—where, on a large scale, the principle is established of teaching the elementary principles of the Christian religion, of enforcing human duties by divine obligations, and carefully abstaining in all cases from interfering with sects or the inculcation of sectarian doctrines. How have they done in the schools of New England? There the great elements of Christian truth are taught in every school, as far as I am acquainted with them. The Scriptures are read, their authority taught and enforced, their evidences explained, and prayers usually attended.

The truth is, that those who really value Christianity, and believe in its importance, not only to the spiritual welfare of man, but to the safety and prosperity of human society, rejoice, that in its revelations and its teachings there is so much which mounts above controversy, and stands on universal acknowledgment. While many things about it are disputed, or are dark, they still plainly see its foundation, and its main pillars; and they behold in it a sacred structure, rising up to the heavens. They wish its general principles, and all its great truths, to be spread over the whole earth. But those who do not value Christianity, nor believe in its importance, to society or individuals, cavil about sects and schisms, and ring monotonous changes upon the shallow and so often refuted objections

founded on alleged variety of discordant creeds and clashing doctrines.

I shall close this part of my argument by reading extracts from an English writer, one of the most profound thinkers of the age—a friend of reformation in the government and laws—John Foster, the friend and associate of Robert Hall. Looking forward to the abolition of the present dynasties of the old world, and desirous to see how the order and welfare of society is to be preserved in the absence of present conservative principles, he says:

"Undoubtedly the zealous friends of popular education account knowledge valuable absolutely, as being the apprehension of things as they are; a prevention of delusions; and so far a fitness for right volitions.

"But they consider religion (besides being itself the primary and infinitely the most important part of knowledge) as a principle indispensable for securing the full benefit of all the rest. It is desired, and endeavored, that the understandings of these opening minds may be taken possession of by just and solemn ideas of their relation to the Eternal Almighty Being; that they may be taught to apprehend it as an awful reality; that they are perpetually under His inspection; and, as a certainty, that they must at length appear before Him in judgment, and find in another life the consequences of what they are in spirit and conduct here. It is to be impressed on them, that His will is the supreme law, that His declarations are the most momentous truths known on earth; and His favor and condemnation the greatest good and evil. Under an ascendency of this divine wisdom it is that their discipline in any other knowledge is designed to be conducted; so that nothing in the mode of their instruction may have a tendency contrary to it, and every thing be taught in a manner recognising the relation with it, as far as shall consist with a natural unforced way of keeping this relation in view. Thus it is sought to be secured, that as the pupil's mind grows stronger, and multiplies its resources, and he therefore has necessarily more power and means for what is wrong, they may be luminously presented to him, as if celestial eyes visibly beamed upon him, the most solemn ideas that can enforce what is right.

"Such is the discipline meditated for preparing the subordinate classes to pursue their individual welfare, and act their part as members of the community.

"All this is to be taught, in many instances, directly, in others by reference for conformation from the Holy Scriptures, from which authority will also be impressed, all the while, the principles of religion. And religion, while its grand concern is with the state of the soul towards God and eternal interests, yet takes every principle and rule of morals under its peremptory sanction; making the primary obligation and responsibility be towards God, of every thing that is a duty, with respect to men.

"So that, with the subjects of this education, the source of propriety shall be conscience—the consideration of how they ought to be regulated in their conduct as a

part of the community, shall be the recollection that their *Master* in heaven dictates the laws of that conduct, and will judicially hold them amenable for every part of it.

"And is it not a discipline thus addressed to the purpose of fixing religious principles in ascendency as far as that difficult object is within the power of discipline, and of infusing a salutary tincture of them into whatever else is taught, the right way to bring up citizens faithful to all that deserves fidelity in the social compact?

"Lay hold on the myriads of juvenile spirits before they have time to grow up, through ignorance, into a reckless hostility to social order; train them to sense and good morals; inculcate the principles of religion, simply and solemnly, *as* religion—as a thing directly of divine dictation, and not as if its authority were chiefly in virtue of human institutions; let the higher orders, generally, make it evident to the multitude that they are desirous to raise them in value, and promote their happiness, and then, *whatever* the demands of the people as a body, thus improving in understanding and sense of justice, shall come to be, and *whatever* modification their preponderance may ultimately enforce on the great social arrangements, it will be infallibly certain that there never *can* be a love of disorder, an insolent anarchy, a prevailing spirit of revenge and devastation. Such a conduct of the ascendant ranks would, in this nation at least, secure that, as long as the world lasts, there never would be any formidable commotion or violent sudden changes. All those modifications of the national economy to which an improving people would aspire, and would deserve to obtain, would be gradually accomplished, in a manner by which no party would be wronged, and all would be the happier."

I not only read this for the excellence of its sentiments and their application to the subject, but because they are the results of the profound meditations of a man who is dealing with popular ignorance. Desirous of, and expecting, a great change in the social system of the Old World, he is anxious to discover that conservative principle, by which society can be kept together when crowns and mitres shall have no more influence. And he says that the only conservative principle must be and is, RELIGION! The authority of God! His Revealed Will! and the influence of the teaching of the ministers of Christianity!

Mr. Webster then stated that he would, on Monday, bring forward certain references and legal points bearing on this view of the case.

The Court then adjourned.

SECOND DAY.

The seven Judges all took their seats precisely at 11 o'clock, and the Court was opened; but it was a quarter past 11 before Mr. Webster arrived.

Mr. BINNEY observed to the Court that he had omitted to notice, in his argument, that, in regard to the Statutes of Uniformity and Toleration in England, that, whilst the Jewish Talmuds for the propagation of Judaism alone were not sustained by those statutes, yet the Jewish Talmuds for the maintenance of the poor were sustained thereby. And the decisions show that, where a gift had for its object the maintenance and education of poor Jewish children, the statutes sustained the devise. In proof of this, he quoted—

First Ambler, by Blunt, p. 228, case of De Costa, &c.

Also, the case of Jacobs & Gomperte, in the notes.

Also, in the notes, 2d Swanston, p. 487, same case of De Costa, &c.

Also, 7th Vesey, p. 423, case of Mo Catto *vs.* Lucardo.

Also, Sheppard, p. 107.

And Boyle, p. 43.

Another case was that of a bequest given to an object abroad, and, in the decision, the Master of the Rolls considered that religious instruction was not a necessary part of education. See, also, the case of the Attorney General *vs.* the Dean and Canons of Christ Church.—Jacobs, p. 485.

Mr. BINNEY then quoted from Noah Webster the definition of the word "tenets," to show that Mr. Webster did not give the right definition when he said that tenets meant religion.

Mr. WEBSTER then rose and said: The arguments of my learned friend, in relation to the Jewish laws as tolerated by the Statutes, go to maintain my very proposition, may it please your Honors. That is, that no school for the instruction of youth in any system which is any way derogatory to the Christian religion, or for the teaching of doctrines that are in any way contrary to the Christian religion, is or ever was re-

garded as a charity by the courts. It is true that the Statutes of Toleration regarded a devise for the maintenance of poor Jewish children, to give them food and raiment and lodging, as a charity. But a devise for the teaching of the Jewish religion to poor children, that should come into the court of chancery, would not be regarded as a charity, or entitled to any peculiar privileges from the court.

When I stated to your Honors, in the course of my argument on Saturday, that all denominations of Christians had some mode or provision for the appointment of teachers of Christianity amongst them, I meant to have said something about the Quakers; and, although we know that the teachers among them come into their office in a somewhat peculiar manner, yet there are preachers and teachers of Christianity provided in that peculiar body, notwithstanding its objection to the mode of appointing teachers and preachers by other Christian sects; and the place or character of a Quaker preacher is an office and appointment as well known as is that of a preacher among any other denomination of Christians.

I have heretofore argued to show that the Christian religion—its general principles—must ever be regarded among us as the foundation of civil society. And I have thus far confined my remarks to the tendency and effect of the scheme of Mr. Girard (if carried out) upon the Christian religion. But I will go farther, and say that this school, this scheme or system, in its tendencies and effects, is opposed to all religions, of every kind. I will not now enter into a controversy with my learned friend about the definition of the word "tenets," being opinions or dogmas, or whatever you please. Religious tenets, I take it, and I suppose it will be generally conceded, mean religious opinions; and a youth that has arrived at the age of eighteen, who has no religious tenets, why then it is very plain that he has no religion. I do not care whether you call them dogmas, tenets, or opinions. If the youth does not entertain dogmas, tenets, or opinions, or opinions, tenets, or dogmas, on religious subjects, then he has no religion at all. And it is idle to pretend that he has. And this strikes at a broader principle than

when you merely look at this school in its effect upon Christianity alone. Now, we will suppose the case of a youth of eighteen, who has just left this school, and has gone through an education of philosophical morality, precisely in accordance with the views and expressed wishes of the donor. He comes then into the world to choose his religious tenets. The very next day, perhaps, after leaving school, he comes into a court of law to give testimony as a witness. Sir, I protest that by such a system he would be disfranchised. He is asked, "What is your religion?" His reply is, "Oh, I have not yet chosen any; I am going to look round, and see which suits me best." He is asked, "Are you a Christian?" He replies, "That involves religious tenets, and as yet I have not been allowed to entertain any." Again, "Do you believe in a future state of rewards and punishments?" And he answers, "That involves sectarian controversies, which have carefully been kept from me." "Do you believe in the existence of a God?" He answers, that there are clashing doctrines involved in these things, which he has been taught to have nothing to do with; that the belief in the existence of a God, being one of the first questions in religion, he is shortly about to think of that proposition. Why, sir, it is vain to talk about the destructive tendency of such a system—to argue upon is to insult the understanding of every man; *it is mere, sheer, low, ribald, vulgar Deism and infidelity!* [Here the effect was almost electric, and some one broke out with applause, which was stopped.] It opposes all that is in Heaven, and all on earth, that is worth being on earth. It destroys the connecting link between the creature and the Creator; it opposes that great system of universal benevolence and goodness that binds man to his Maker. *No religion till he is eighteen!* What would be the condition of all your families—of all our children—if religious fathers and religious mothers were to teach their sons and daughters no religious tenets till they were eighteen? What would become of their morals, their excellence, their purity of heart and life, their hope for time and eternity! What would become of all those thousand ties of sweetness,

benevolence, love, and Christian feeling, that now render our young men and young maidens, like comely plants growing up by a streamlet's side—the graces and the grace of opening manhood—of blossoming womanhood? What would become of all that now renders the social circle lovely and beloved? What would become of society itself? How could it exist? And is that to be considered a charity which strikes at the root of all this; which subverts all the excellence and the charms of social life; which tends to destroy the very foundation frame-work of society, both in its practices and in its opinions? that subverts the whole decency, the whole morality, as well as the whole Christianity and government of society? No, sir; no, sir!

And here let me turn to the consideration of the question, "What is an oath?" I do not mean in the variety of definitions that may be given to it, as it existed and was practised in the time of the Romans, &c., but an oath as it exists at present in our courts of law; as it is founded on a degree of consciousness that there is a Power above us that will reward our virtues or punish our vices. We all know that the doctrine of the English law is, that there must be in every person who enters court as a witness, be he Christian or Hindoo, there must be a firm conviction on his mind that falsehood or perjury will be punished, either in this world or the next, or he cannot be admitted as a witness. If he has not this belief, he is disfranchised. In proof of this, I refer your Honors to the great case of Ormichund against Barker, in Lord Chief Justice Wills's report. There this doctrine is clearly laid down. But in no case, a man that has no belief in future rewards and punishments, for virtues or vices, is allowed to be a witness, nôr ought he to be. We hold life, liberty, and property, in this country, upon a system of oaths—oaths founded on a religious belief of some sort. And that system which would strike away the great substratum, destroy the safe possession of life, liberty, and property, destroy all the institutions of civil society, cannot and will not be considered as entitled to the protection of a court of equity. It has been said, on the other side, that

there was no teaching *against* religion or Christianity in this system. I deny it. The whole testament is one bold proclamation against Christianity and religion of every creed. The children are to be brought up in the principles declared in that testament. They are to learn to be suspicious of Christianity and religion; to keep clear of it, that the youthful heart may not become susceptible of the influences of Christianity or religion in the slightest degree. They are to be told and taught that religion is not a matter for the heart or conscience, but for the decision of the cool judgment of mature years; that at that period when the whole Christian world deem it most desirable to instil into the tender and comparatively pure mind and heart of the child, ere the cares and corruptions of the world have reached and seared it, the chastening influences of Christianity—at that period, the child in this college is to be carefully excluded therefrom, and to be told that its influence is pernicious and dangerous in the extreme. Why, the whole system is a constant preaching against Christianity and against religion: and I insist that there is no charity, and can be no charity, in that system of instruction from which Christianity is excluded. I perfectly agree with what my learned friend says in regard to the monasteries of the old world, as seats of learning, to which we are all indebted at the present day. Much of our literature—almost all of our early histories, and a vast amount of literary treasure, was preserved therein, and emanated therefrom. But we all know that, although these were emphatically receptacles for learning of the highest order, yet they were always connected with Christianity, and were always conducted as schools of religious learning.

Going back as far as the statutes of Henry IV, as early as 1402, (2d Pickering, p. 433,) in the act respecting charities, we find that one hundred years before the Reformation, in Catholic times, in the establishment of every charitable institution, there was to be proper provision for religious instruction. Again, after the time of the Reformation, when those monastic institutions were abolished, in the 1st Edward VI, ch. 14, we find certain *chantries* abolished, and their funds appropriated

to the instruction of youth, such as the grammar schools of that reign, which Lord Eldon says extended all over the kingdom; and in all these we find provisions for religious instruction, the dispensation of the same being by a teacher or preacher. In 2d Swanston, p. 529, the case of the *Bedford Charity*, Lord Eldon gives a long opinion, in the course of which he says, that in these schools, care is taken to educate youth in the Christian religion, and in all of them the New Testament is taught, both in Latin and Greek. Here, then, we find that the great and leading provision, both before and after the Reformation, was to connect the knowledge of Christianity with human letters. And it will be always found, that a school for instruction of youth, to possess the privileges of a charity, must be provided with religious instruction.

For the decision, that the essentials of Christianity are part of the common law of the land, I refer your Honors to 1st Vernon, p. 293, where Lord Hale, who cannot be suspected of any bigotry on this subject, says that, to decry religion, and call it a cheat, tends to destroy all religion; and he also declares Christianity to be part of the common law of the land. So Mr. Dane, in his Abridgment, ch. 219, recognises the same principle. In 2d Strange, p. 834, case of the *King against Wilson*, the judges would not suffer it to be debated that writing against religion generally was an offence at common law. They laid stress upon the word "generally," because there might arise differences of opinion between religious writers on points of doctrines, and so forth. So in *Taylor's case*, 3d Merivale, p. 405, by the High Court of Chancery, these doctrines were recognised and maintained. Also, 2d Burns's Ecclesiastical Law, p. 95, *Evans against the Chamberlain of London*; and in 2d Russell, p. 501, *the Attorney General against the Earl of Mansfield.*

There is a case of recent date, which, if the English law is to prevail, would seem conclusive as to the character of this devise. It is the case of *the Attorney General vs. Cullum*, 1st vol. of Young and Collyer's Reports, p. 411. The case was heard and decided in 1842, by Sir Knight Bruce, Vice

Chancellor. The reporter's abstract, or summary, of the decision is this: "COURTS OF EQUITY, IN THIS COUNTRY, WILL NOT SANCTION ANY SYSTEM OF EDUCATION IN WHICH RELIGION IS NOT INCLUDED."

The charity in question in that case, was established in the reign of Edward IV, for the benefit of the community and poor inhabitants of the town of Bury St. Edmunds. The objects of the charity were various: for relief of prisoners, educating and instructing poor people, for food and raiment for the aged and impotent, &c. There were uses, also, now deemed superstitious, such as praying for the souls of the dead. In this, and in other respects, the charity required revision, to suit it to the habits and requirements of modern times; and a scheme was accordingly set forth for such revision by the master, under the direction of the court. By this scheme, there were to be schools, and these schools were to be closed on Sundays, although the Scriptures were to be read daily on other days. This was objected to, and it was insisted, on the other hand, that the masters and mistresses of the schools should be members of the Church of England; that they should, on every Lord's day, give instruction in the doctrines of the Church to those children whose parents might so desire; but that all the scholars should be required to attend public worship every Lord's day in the parish church, *or other place of worship, according to their respective creeds.*

The Vice Chancellor said, that the term "education" was properly understood, by all the parties, to comprehend religious instruction; that the objection to the scheme proposed by the master was not that it did not provide for religious instruction according to the doctrine of the Church of England, but that it did not provide for religious instruction at all. In the course of the hearing, the Vice Chancellor said, that any scheme of education, without religion, would be worse than a mockery. The parties afterwards agreed, that the masters and mistresses should be members of the Church of England; that every school day the master should give religious instruction, during one hour, to all the scholars—*such religious instruction to be*

confined to the reading and explanation of the Scriptures; that on every Lord's day he should give instruction in the liturgy, catechism, and articles of the Church of England, and that the scholars should attend church every Lord's day, *unless they were children of persons not in communion with the Church of England.*

In giving the sanction of the court to this arrangement, the Vice Chancellor said, that he wished to have it distinctly understood that the ground on which he had proceeded was not a preference of one form of religion to another, but the necessity, if the matter was left to him judicially, to adopt the course of requiring the teachers to be members of the Church of England.

This case clearly shows, that, at the present day, a school, founded by a charity, for the instruction of children, cannot be sanctioned by the courts as a charity, unless the scheme of education includes religious instruction. It shows, too, that this general requisition of the law is independent of the church establishment, and that it is not religion in any particular form, but religion—religious and Christian instruction in some form—which is holden to be indispensable.

It cannot be doubted how a charity for the instruction of children would fare in an English court, the scheme of which should carefully and sedulously exclude all religious or Christian instruction, and profess to establish morals on principles no higher than those of enlightened Paganism.

Enough, then, your Honors, has been said on this point; and I am willing that inquiry should be prosecuted to any extent of research to controvert this position—that a school of education for the young, which rejects the Christian religion, cannot be sustained as a charity, so as to entitle it to come before the courts of equity for the privileges which they have power to confer on charitable bequests.

Mr. Webster then replied to the remarks of Mr. Binney, in relation to the Liverpool Blue Coat School, and read from the report of Mr. Bache on education in Europe, Mr. Bache having been sent abroad by the city of Philadelphia, to investigate this whole matter of education.

Mr. Webster. If Mr. Girard had established such a school as that, it would have been free from all those objections that have been raised against it. This Liverpool Blue Coat School, though partially too much of a religious party character, is strictly a church establishment. It is a school established on a peculiar foundation—that of the Madras system of Dr. Bell. It is a monitorial school; those who are advanced in learning are to teach the others in religion, as well as secular knowledge. It is strictly a religious school, and the only objection is, that it is too much confined, in its instruction, to a particular sect.

Mr. Binney observed that there was no provision made for clergymen.

Mr. Webster. That is true, because the scheme of the school is monitorial, in which the more advanced scholars instruct the others. But religious instruction is amply and particularly provided for.

Mr. Webster then referred to Shelford, p. 105, and onward, under the head "Jews," in the fourth paragraph, where, he stated, that the whole matter, and all the cases, as regarded the condition and position of the Jews, as respected various charities, were given in full.

He then referred to the Smithsonian legacy, which had been mentioned, and which he said was no charity at all, nor any thing like a charity. It was a gift to Congress, to be disposed of as Congress saw fit, for scientific purposes.

He then replied, in a few words, to the arguments of Mr. Binney in relation to the University of Virginia; and said that, although there was no provision for religious instruction in that University, yet he supposed it would not be contended for a moment that the University of Virginia was a charity, or that it came before the courts claiming of the law of that State protection as such. It stood on its charter.

Mr. Webster. I repeat again, before closing this part of my argument, the proposition—important as I believe it to be—for your Honors' consideration, that the proposed school, in its

just character, objects, and tendencies, is derogatory to Christianity and religion! And if it be so, then I maintain that it cannot be considered a charity, and as such entitled to the just protection and support of a court of equity. I consider this the great question for the consideration of this Court. I may be excused for pressing it on the attention of your Honors. It is one which, in its decision, is to influence the happiness, the temporal and the eternal welfare, of one hundred millions of human beings, alive and to be born, in this land! Its decision will give a hue to the apparent character of our institutions; it will be a comment on their spirit to the whole Christian world! I again press the question to your Honors—"*Is a clear, plain, positive system for the instruction of children, founded on clear and plain objects of infidelity, a charity in the eye of the law, and as such entitled to the privileges awarded to charities in a court of equity?*" And with this, I leave this part of the case.

THIRD DAY.

I shall now, may it please your Honors, proceed to inquire whether there is, in the State of Pennsylvania, any settled public policy to which this school, as planned by Mr. Girard in his will, is in opposition; for it follows, that if there be any settled public policy in the laws of Pennsylvania on this subject, then any school, or scheme, or system, which tends to subvert this public policy, cannot be entitled to the protection of a court of equity. It will not be denied that there is a general public policy in that as in all States, drawn from its history and its laws. And it will not be denied, that any scheme or school of education which directly opposes this is not to be favored by the courts. Pennsylvania is a free and independent State. She has a popular government—a system of trial by jury, of free suffrage, of vote by ballot, of alienability of property. All these form part of the general public policy of Pennsylvania. Any man who shall go into that State can speak and write as much as he pleases against a popular form of government, freedom of suffrage, trial by jury, and against

any or all of these that I have named; he may decry civil liberty, and assert the divine right of Kings, and still he does nothing criminal; but if, to give success to such efforts, special power from a court of justice is required, it will not be given. There is not one of these features of the general public policy of Pennsylvania, but what a school might be established, and preachers and teachers employed to teach against. That might in a certain sense be considered a school of education, but it would not be a charity. And if Mr. Girard, in his lifetime, had founded schools, and employed teachers to preach and teach in favor of infidelity, or against popular government, free suffrage, trial by jury, or the alienability of property, there was nothing to stop him, or prevent him from so doing. But where any one or all of these come to be provided for a school or system as a charity, and come before the courts for favor, then in neither one, nor all, nor any, can they be favored, because they are opposed to the general public policy and public law of the State.

These great principles have always been recognised; and these are no more parts and parcels of the public law of Pennsylvania than is the Christian religion. We have in the charter of Pennsylvania, as prepared by its great founder, William Penn—we have in his "great law," as it was called, the declaration—that the preservation of Christianity is one of the great and leading ends of government. This is declared in the charter of the State. Then the laws of Pennsylvania—the statutes against blasphemy, the violation of the Lord's day, and others to the same effect, proceed on this great, broad principle, that the preservation of Christianity is one of the great ends of government. This is the general public policy of Pennsylvania. On this head we have the case of Updegraffe against the Commonwealth, 11th Sargent & Rawle, page 394; in which a decision in accordance with this whole doctrine was given by the Supreme Court of Pennsylvania. The solemn opinion pronounced by that tribunal

begins by a general declaration that Christianity is and has always been part of the common law of Pennsylvania.*

I have said, your Honors, that our system of oaths in all our courts, by which we hold liberty and property, and all our rights, are founded on or rest on Christianity and a religious belief. So does the affirmation of Quakers—that rests on religious scruples drawn from the same source, the same feeling of religious responsibility.

The courts of Pennsylvania have themselves decided that a charitable bequest, which counteracts the public policy of the State, cannot be sustained. This was so ruled in the often cited case of the Methodist Church against Remington. There, the devise was to the Methodist Church generally, extending through the States and into Canada, and the trust was declared void on this account alone, viz: that it was inconsistent with the public policy of the State—inconsistent with the general spirit of the laws of Pennsylvania. But is there any comparison to be made between that ground on which a devise to a church is declared void—viz: as inconsistent with the public policy of the State—and the case of a devise which undermines and opposes the whole Christian religion, and derides all its ministers? The one tending to destroy all religion, and the other being merely against the spirit of the legislation and laws of the State, and the general public policy of Government, in a very subordinate matter. Can it be shown that this devise of a piece of ground to the Methodist church can be properly set aside, and declared void on general grounds, and not be shown that such a devise as that of Mr. Girard which tends to overturn as well as oppose the public policy and laws of Pennsylvania, can also be set aside?

Sir, there are many other American cases which I could cite to the Court in support of this point of the case. I will now only refer to 8 Johnson, page 291.

It is the same in Pennsylvania as elsewhere—the general principles and public policy are sometimes established by con-

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* Vide Appendix, No. 2.

stitutional provisions—sometimes by legislative enactments—sometimes by judicial decisions, and sometimes by general consent. But how, or when it may be established, there is nothing that we look for with more certainty than this general principle, that Christianity is part of the law of the land. This was the case among the Puritans of England, the Episcopalians of the Southern States, the Pennsylvania Quakers, the Baptists, the mass of the followers of Whitefield and Wesley and the Presbyterians—all—all brought and all adopted this great truth—and all have sustained it. And where there is any religious sentiment amongst men at all, this sentiment incorporates itself with the law. *Every thing declares it!* The massive Cathedral of the Catholic; the Episcopalian Church, with its lofty spire pointing heavenward; the plain temple of the Quaker; the log church of the hardy pioneer of the wilderness; the mementos and memorials around and about us—the grave yards—their tombstones and epitaphs—their silent vaults—their mouldering contents—all attest it. *The dead prove it as well as the living!* The generation that is gone before speak to it, and pronounce it from the tomb! We feel it! All, all, proclaim that Christianity—general, tolerant Christianity—Christianity independent of sects and parties—that Christianity to which the sword and the fagot are unknown—general, tolerant Christianity, is the law of the land!

Mr. Webster, having gone over the other points in the case, which were of a more technical character, in conclusion, said:

I take leave of this cause! [Great sensation!] I look for no good whatever from the establishment of this school—this college—this scheme—this experiment of an education in "practical morality," unblessed with the influences of religion! It sometimes happens to man to attain for good, by accident, that which he could not achieve by long-continued exercise of industry and ability. And it is said, even of the skilful and the man of genius, that, by accident, he will sometimes "snatch a grace beyond the reach of art."

And I believe that men sometimes do mischief, not only be-

yond their intent, but beyond the ordinary scope of their talents and ability. In my opinion, if Mr. Girard had given years to the study of a mode by which he could dispose of his vast fortune so that no good could arise to the general cause of charity—no good to the general cause of learning—no good to human society—and which should be most productive of protracted struggles, troubles, and difficulties, in the popular councils of a great city, he could not so effectually have attained that result as he has by this devise now before the Court. It is not the result of good fortunes, but of bad fortunes, which have over-ridden and cast down whatever of good might have been accomplished by a different disposition. I believe that this plan—this *scheme*—was unblessed in all its purposes, and in all its original plans! Unwise in all its frame and theory, while it lives, it will lead an annoyed and troubled life, and leave an unblessed memory when it dies! If I could persuade myself that this Court would come to such a decision as, in my opinion, the public good and the law require, and if I could believe that any humble efforts of my own had contributed in the least to lead to such a result, I should deem it the crowning mercy of my professional life.

[Mr. Webster spoke this day for an hour and a half, and for seven hours and a half on the two preceding days. Immediately after he concluded, all the ladies rose and left the Court in a body, and it was ten minutes before order could be restored.]

APPENDIX.

No. 1.

Extract from the writings of Bishop White.

The will goes to the extent of the abandonment of religion, as prescribing the rules of human conduct. If a collection of youth may have their attention exclusively directed to other motives, no reason can be given why they may not be surrendered to the same through life. If the instructers are forbidden to call the attention of their pupils to the Author of all the wonders which open on their senses; and to a state succeeding that which, as they must soon discover, will be ended by the grave—and certainly silence on these and on the like subjects is exacted by the terms of the bequest; and if the prescribed rule of life be sufficient until the age of fourteen or fifteen, or even of eighteen, long before which there will be felt the struggles between inclination and the sense of duty; the sufficiency of the same rule for the remainder of life is an obvious consequence.

The error of Mr. Girard's restrictions is evident in the principle on which it is founded—the diversity of sentiment on subjects of religion. Let the principle be tested in application to the relations of domestic life. No wise head of a family withholds instruction from his children on the reciprocal duties of parent and child, and of the parties to a marriage contract. Yet how many shades of difference of opinion are there as to the proper extent of parental power, and to that of the correspondent obedience of the child? Similar diversities prevail as to the other relations. Is sage instruction to be delayed on these accounts?

The like remark may be made on the subject of civil rulers, and of the allegiance due from the citizen or subject. What a wide field is open by the claims of power in the hands of a single person, or in those of a few, or in an aristocracy, or in a popular assembly, or in some one of the many mixed forms which have been either adopted or imagined! According to the reasoning of the will, all determination should be deferred to the ages of fourteen or fifteen, or perhaps eighteen; yet, in disregard of such laxity, every good citizen instils into the minds of his offspring sentiments which sustain the rights of those who govern, and exact obedience within the limits of the laws.

The present writer has a very limited acquaintance with the gentlemen who compose the respectable bodies of our city councils. He supposes of the most, and thinks it probable of all of them, that they confess the claims of religion, by denominating themselves as belonging, each of them, to one or to another of the religious societies within the bounds of the city. He therefore, with great respect, submits to their understandings how far they can, with clear consciences, undertake the government of a seminary which discharges its pupils from all regard to religious

obligation, and from all subjection to religious discipline. They cannot but be aware of the contrariety of so ungodly a regimen to those Holy Scriptures which they make the foundation of their several creeds. In the Old Testament they read—"bring up a child in the way in which he should go." They cannot be ignorant of what the Jewish lawgiver says concerning the laws of God—"thou shalt diligently teach them to thy children, and thou shalt talk of them when thou sittest in thy house, and when thou walkest by the way, and when thou liest down, and when thou risest up." And, if moral cultivation be a part of the plan of any literary institution, it cannot be beyond the reach of the caution—"the fear of the Lord is the beginning of wisdom." The calls of the New Testament are in unison with those of the Old—"ye parents, bring up your children in the nurture and admonition of the Lord;" "children, obey your parents in the Lord;" and, "I write unto you, little children, because ye have known the Father." Very different are these and the like provisions from the delay of even the mention of such sanctions of duty to young men under the ages of fourteen or fifteen, or towards eighteen; whatever need there may be seen of them in the increasing strength of their passions and of their appetites.

Let there be attention to the operation of the bequest in its occasional violation of the tenderest feelings of the parental breast. We will suppose four religious men—an Episcopalian, a Presbyterian, a Baptist, and a Methodist—in circumstances barely competent to the subsistence of their families. Let them perceive themselves departing this life, without provision for the support and the education of their children; and no other guardianship over them to be relied on, beside that of certain functionaries of the city, wisely provided for the object. These guardians may judge the binding of them to reputable tradesmen to have less prospect of advantage than the entering of them into the contemplated receptacle of orphans. According to the character of the supposed dying men, notwithstanding the diversities of their opinions on various points, they would be the same in the design, had their lives been spared, of giving a religious education to their children; whose deaths they would deem a less calamity than their being thrown on a world of temptation at the age of fourteen, or of fifteen, or of eighteen, without the knowledge of God or of a future state, or of those Scriptures which, in the parental estimate, are necessary to their being made "wise unto salvation." A great proportion of the children of the poor are disposed of under a guardianship created by the laws. This will probably be the principal source of supply to a seminary in which the sound of the voice of religion is never to reach the ears of the juvenile inmates.

It would be unjust to the memory of Mr. Girard not to notice his remarking it as a privilege of his orphans, on their arrival at the age for the leaving of the seminary, to adopt such tenets as their matured reason may enable them to prefer. It is not to the purpose to inquire how far this privilege, which his protegées will derive from the laws of the land, may be supposed to add to or enforce the moral education which they may have brought with them from the seminary. Whatever may have been, or may not have been, the wishes of the testator to this point; and whatever effect our favorable construing of his views may have on our estimate of his own

character, it is all foreign to the present argument, which tends to the two positions, that it is irreligious and unchristian to accept of the public responsibility of an institution, to the pupils of which there shall be denied all instruction in religion; and that if other motives are sufficient for their government until their arrival at the ages of fourteen and fifteen and eighteen, no reason can be given why they may not be sufficient through the remainder of life.

Perhaps there may seem an interference of the argument with a prejudice not uncommon, that the minds of the secluded orphans would be sensible of impressions made on them by nature of the being of God, and of their responsibility to his tribunal. This is the exploded doctrine of innate ideas. If there be any not yet reached by what has been written on the subject by John Locke, they may be referred to the observations lately made on those born deaf and dumb; who know nothing of the primary truths of religion, until taught through the medium of the expedients brought into operation for that unfortunate class of the human family. Whether the design of Mr. Girard can be strictly executed, may be considered as a problem. Should this be the case, his orphans will leave the seat of their juvenile residence as void of any trace of a knowledge of the Deity, as some who might be shown to him in an institution which in his will he has properly distinguished by a munificent donation.

It is required that for admission the orphan shall be between six and ten years of age. Doubtless, within those terms, there are sometimes salutary impressions on infant minds. Where this has been the case, it is not probable that a single trace of them will remain through years, in a sphere so unfavorable to their cultivation.

It may be anticipated as very unlikely, that for the intended seminary there will be obtained, even if it should be thought desirable, instructers who are believers in the Christian religion, and who have its interests at heart. Were this possible, it is easy to perceive the painful circumstances in which such instructers must sometimes find themselves. Let an instructer be supposed taking a walk with one of the pupils, on some fine morning during the renewal of the herbage of the year. Let there arise in the mind of the former some such passage as the address to the Deity, in Adam's Morning Hymn, in Milton—"These are thy wondrous works, Parent of good! Almighty, &c." The instructer, warmed by the theme and the surrounding scene, might be tempted to break out in such an act of adoration. But it would be unfaithfulness to his trust, and he must keep it a secret from his pupil that he believes in the existence of such a being. The supposition might be diversified by a great variety of cases, sufficient to show that, under the provisions of the will, there will be an interdict of Christian instructers, whether designed or not, as well as of Christian teaching, within the walls.

That there will be the supply of teachers of a very different description, may be counted on; and modern times have multiplied those pests of society who, under the profession of schoolmasters, lose no opportunities of infusing their poison of infidelity into unsuspicious minds. Such instructers have no authority, under the will, to go beyond the lessons of mere morality; so as to teach any doctrine of absolute irreligion, from the highest point of Atheism to the most specious of all the expedients for the misrepresentation of any of the contents of Holy Scripture. But

no one, acquainted with human nature, will believe that such instructers, in teaching, will find reluctance to the guarding of their pupils against the religious truths which will be addressed to them on their entrance into social life, resolving what they will hear into popular fable and superstition, which it is now high time to lay aside.

From the tenor of the argument, there will have been anticipated the opinion of what should be expected from city councils. It is, that there should be a respectful but determined rejection of the trust intended to be instituted by the will of Stephen Girard, Esq., for the maintaining and the educating of orphans.

It is a great sacrifice, but it cannot be too great, when the acceptance of it would be an acknowledgment that religion, even in its simplest forms, is unnecessary to the binding of men to their various duties. As yet, no such theory has shown its face in the proceedings of any of the constituted authorities of the United States. If the breaking of this unholy ground should be a corporate act of our city councils, there will be apprehended from it the most disastrous consequences, by

A CITIZEN OF PHILADELPHIA.

No. 2.

Extract from the judgment of the Supreme Court of Pennsylvania, in the case of Updegraffe vs. *the Commonwealth.*

Christianity, general Christianity, is, and always has been, a part of the common law of Pennsylvania; Christianity, without the spiritual artillery of European countries; for this Christianity was one of the considerations of the royal charter, and the very basis of its great founder, William Penn; not Christianity founded on any particular religious tenets; not Christianity with an established church, and tithes, and spiritual courts; but Christianity with liberty of conscience to all men. William Penn and Lord Baltimore were the first legislators who passed laws in favor of liberty of conscience; for before that period the principle of liberty of conscience appeared in the laws of no people, the axiom of no government, the institutes of no society, and scarcely in the temper of any man. Even the reformers were as furious against contumacious errors as they were loud in asserting the liberty of conscience. And to the wilds of America, peopled by a stock cut off by persecution from a Christian society, does Christianity owe true freedom of religious opinion and religious worship.

From the time of Bracton, Christianity has been received as a part of the common law of England. I will not go back to remote periods, but state a series of prominent decisions, in which the doctrine is to be found.

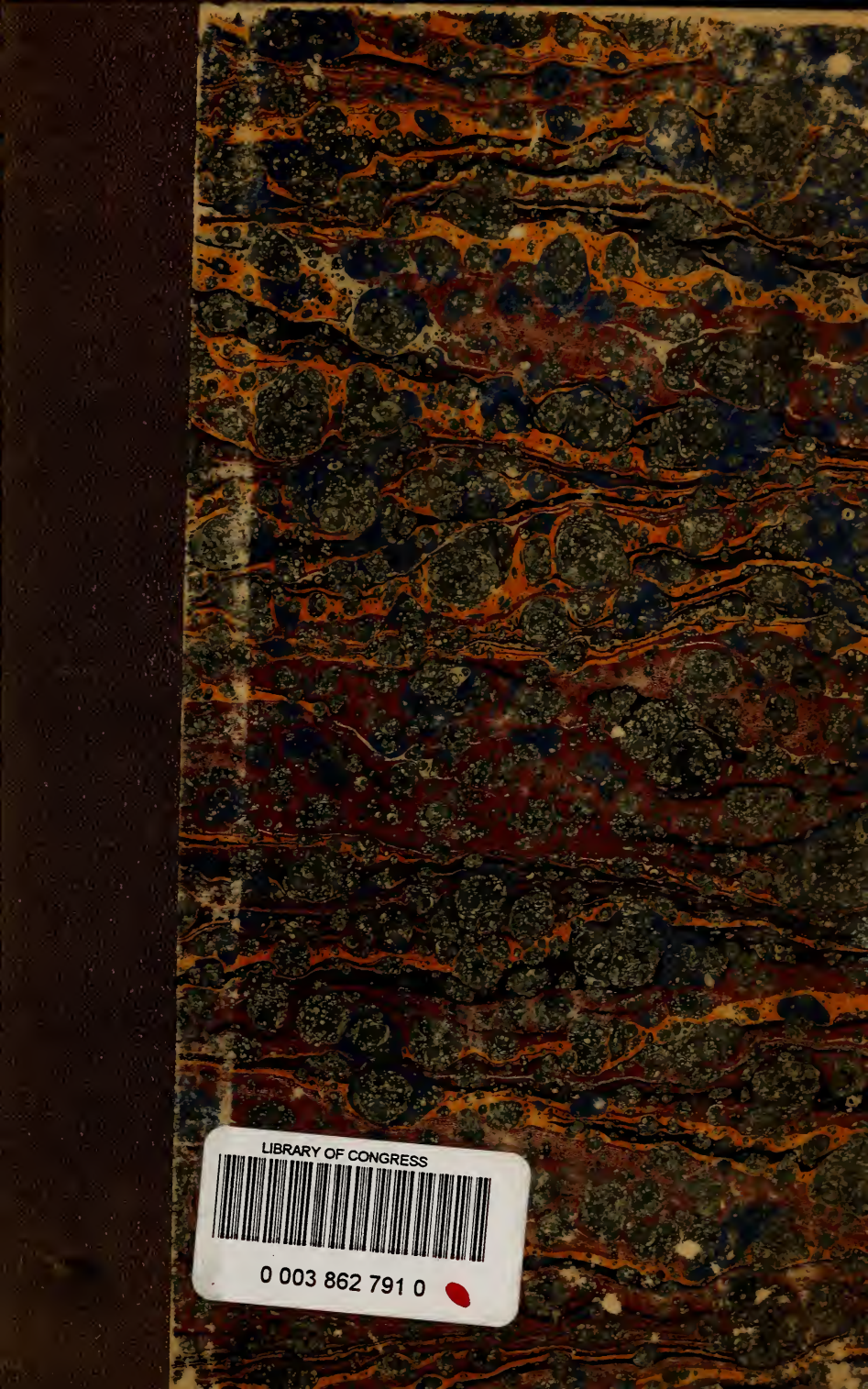
In the case of the King *vs.* Woolaston—2 Stra., 844; Fitzg., 64; Raymond, 162—the defendant had been convicted of publishing five libels, ridiculing the miracles of Jesus Christ, his life and conversation, and was moved in arrest of judgment that this offence was not punishable in the temporal courts; but the court said they would not suffer it to be debated "whether to write against Christianity generally

was not an offence of temporal cognizance." It was further contended that it was merely to show that those miracles were not to be taken in a literal but allegorical sense, and, therefore, the book could not be aimed at Christianity in general, but merely attacking one proof of the Divine mission. But the court said the main design of the book, though professing to establish Christianity upon a true bottom, considers the narrations of Scripture as explanative and prophetical, yet that these professions could not be credited, and the rule is, *allegatio contra factum non est admittendum*. In that case the court laid great stress on the term *general*, and did not intend to include disputes between learned men on particular and controverted points; and Lord Chief Justice Raymond, Fitzg., 66, said: "I would have it taken notice of, that we do not meddle with the difference of opinion, and that we interfere only where the root of Christianity is struck at."

In the justly admired speech of Lord Mansfield, in a case which made much noise at the time—Evens *vs.* Chamberlain, of London, Furneaux's Letters to Sir W. Blackstone, Appx. to Black. Com., and 2 Burns's Eccles. Law, p. 95—conscience, he observed, is not controllable by human laws, nor amenable to human tribunals; persecution, or attempts to force conscience, will never produce conviction, and were only calculated to make hypocrites or martyrs. There never was a single instance, from the Saxon times down to our own, in which a man was punished for erroneous opinions. For Atheism, blasphemy, and reviling the Christian religion, there have been instances of prosecution at the common law, but bare non-conformity is no sin by the common law, and all pains and penalties for non-conformity to the established rites and modes are repealed by the acts of toleration, and dissenters exempted from ecclesiastical censuses. What bloodshed and confusion have been occasioned, from the reign of Henry IV, when the first penal statutes were enacted, down to the Revolution, by laws made to force conscience. There is certainly nothing more unreasonable, nor inconsistent with the rights of human nature, more contrary to the spirit and precepts of the Christian religion, more iniquitous and unjust, more impolitic, than persecution against natural religion, revealed religion, and sound policy. The great, and wise, and learned judge, observes: "The true principles of natural religion are part of the common law; the essential principles of revealed religion are part of the common law; so that a person vilifying, subverting, or ridiculing them, may be prosecuted at common law; but temporal punishments ought not to be inflicted for mere opinions." Long before this, much suffering, and a mind of strong and liberal cast, had taught this sound doctrine and this Christian precept to William Penn. The charter of Charles II recites, that "Whereas our trusty and beloved William Penn, out of a commendable desire to enlarge our English empire, as also to reduce the savages, by gentle and just measures, to the love of civil society and the Christian religion, hath humbly besought our leave to translate a colony," &c. The first legislative act in the colony was the recognition of the Christian religion, and establishment of liberty of conscience. Before this, in 1646, Lord Baltimore passed a law in Maryland in favor of religious freedom; and it is a memorable fact, that of the first legislators who established religious freedom, one was a Roman Catholic and the other a Friend. It is called the great law of the body of laws in the

province of Pennsylvania, passed at an assembly at Chester, the 7th of the 12th month, December. After the following preamble and declaration, viz: "Whereas the glory of Almighty God, and the good of mankind, is the reason and end of government, and therefore government in itself is a venerable ordinance of God, and forasmuch as it is principally desired and intended by the proprietary and Governor and the freemen of the province of Pennsylvania and territories thereunto belonging, to make and establish such laws as shall best preserve true Christian and civil liberty, in opposition to all unchristian, licentious, and unjust practices, whereby God may have his due, Cæsar his due, and the people their due, from tyranny and oppression on the one side, and insolency and licentiousness on the other, so that the best and firmest foundation may be laid for the present and future happiness both of the Governor and people of this province and territories aforesaid, and their posterity"—[Then follow enactments against profanity, blasphemy, and violation of the Lord's day.]

Amidst the concurrent testimony of political and philosophical writers among the Pagans, in the most absolute state of democratic freedom, the sentiments of Plutarch on this subject are too remarkable to be omitted. After reciting that the first and greatest care of the legislators of Rome, Athens, Lacedæmon, and Greece in general, was, by instituting solemn supplications and forms of oaths, to inspire them with a sense of the favor or displeasure of Heaven, that learned historian declares, that we have met with towns unfortified, illiterate, and without the conveniences of habitations, but a people wholly without religion no traveller hath yet seen; and a city might as well be erected in the air as a State be made to unite where no divine worship is attended. Religion he terms the cement of civil union, and the essential support of legislation. No free government now exists in the world, unless where Christianity is acknowledged, and is the religion of the country. So far from Christianity, as the counsel contends, being part of the machinery necessary to despotism, the reverse is the fact. Christianity is part of the common law of this State. It is not proclaimed by the commanding voice of any human superior, but expressed in the calm and mild accents of customary law. Its foundations are broad, and strong, and deep; they are laid in the authority, the interest, the affections of the people. Waiving all questions of hereafter, it is the purest system of morality, the firmest auxiliary, and only stable support of all human laws. It is impossible to administer the laws without taking the religion which the defendant in error has scoffed at, that Scripture which he has reviled, as their basis; to lay aside these is at least to weaken the confidence in human veracity, so essential to the purposes of society, and without which no question of property could be decided, and no criminal brought to justice; an oath in the common form, on a discredited book, would be a most idle ceremony.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